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Legislative Assembly of Ontario

Assemblée législative de l'Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

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REPORT

OF

LYNN MORRISON
ACTING INTEGRITY COMMISSIONER

RE: MICHAEL A. BROWN,
MEMBER FOR ALGOMA-MANITOULIN

TORONTO, ONTARIO
FEBRUARY 14, 2008

RE: MICHAEL A. BROWN, MEMBER FOR ALGOMA – MANITOULIN

[1] In a complaint made on November 6, 2007 under section 30 of the *Members' Integrity Act, 1994,* Peter Kormos, the member for Welland[1], has alleged that Michael Brown, the member for Algoma-Manitoulin and then Speaker of the Legislative Assembly, breached Parliamentary Convention and thus contravened the *Members' Integrity Act, 1994* by attending a post-election celebratory dinner for Liberal caucus members and spouses on October 28, 2007.

[2] This complaint requires consideration of the jurisdiction of this Office to deal with an alleged contravention that could only be made against one member of the Assembly – the Speaker.

[3] On November 6, 2007, Mr. Kormos filed his complaint with this Office in accordance with the Directive regarding the procedure for complaints under section 30 of the *Members' Integrity Act, 1994.* Mr. Brown filed responding submissions on November 19, 2007.

[4] Mr. Kormos wrote to me on November 30, 2007 to request that I cease consideration of the complaint in light of the fact that on November 28, 2007, Steve Peters, MPP, was elected to the Office of Speaker. As Mr. Brown was the subject of the complaint, I sought his position with respect to this request and he advised that he would like me to deal with the complaint in the usual way. Mr. Kormos filed reply submissions on December 10, 2007.

[1] At the time the complaint was filed, Mr. Kormos was the member for Niagara-Centre. However, pursuant to the *Representation Act, 2005* the electoral districts changed and he was elected as the member for Welland.

Facts

[5] The facts are not in dispute. Mr. Brown was elected Speaker of the Legislative Assembly for the 38th Parliament on October 11, 2005. On September 10, 2007 the 38th Parliament was dissolved.

[6] Section 28 of the *Legislative Assembly Act,* R.S.O. 1990, c. L.10, requires that the Assembly elect a Speaker from the ranks of the elected MPPs at its first meeting after a general election. The Speaker remains in Office until a new Speaker is elected (or re-elected) by the Assembly (section 33 of the *Legislative Assembly Act*). The fact that the Speaker remains in that role until the election makes it possible for a Speaker who is not a member to be the Speaker for a period of time. This, in fact, occurred when former Speaker Gary Carr decided not to run in the general election in 2003. He remained in Office from October 2, 2003 until Speaker Alvin Curling was elected on November 19, 2003.

[7] Since the 35th Parliament, Speakers in Ontario have been elected by secret ballot, a change that was modeled after a similar change at the Federal level and was designed to ensure that the Speaker is someone who has the support of the Assembly.[2]

[8] Mr. Brown's tenure as the Speaker of the 38th Parliament did not provide him with any special right to the Office of Speaker in the 39th Parliament. However, in order to qualify for election as Speaker, he had to be a member. To be a member, Mr. Brown was required to run and be elected in the general election. Mr. Brown did run as a Liberal candidate in the election.

[9] The Ontario general election occurred on October 10, 2007 and Mr. Brown was re-elected as the MPP for Algoma-Manitoulin. As provided for in section 33 of the *Legislative Assembly Act,* he remained in the Office of Speaker until such time as an election for Speaker of the 39th Parliament could occur.

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[2] Dale Lovick, "Impartial But Not Non-Partisan: Re-examining the Mythology of the Speakership" (1996-1997) 19(4) *Canadian Parliamentary Review* 2 at 5 ("Lovick") (online at www.parl.gc.ca/Infoparl/); Larry Johnson (October 2007), *An Overview of the Ontario Legislature* (Research Paper C105, The Legislative Library) at 29.

[10] On October 28, 2007 Mr. Brown attended a dinner hosted by the Liberal Caucus. Its purpose was to celebrate the Liberal election victory.

[11] The election for Speaker of the 39th Parliament occurred on November 28, 2007. Mr. Brown sought re-election as Speaker; however, Mr. Peters was the successful candidate.

The Position of Mr. Kormos

[12] Mr. Kormos states that it is a clear and long-established Parliamentary Convention contemplated by the *Members' Integrity Act, 1994* that the Speaker abstain from partisan political activity to protect the impartiality of the Office of Speaker and that, in violation of this Convention, on October 28, 2007 Mr. Brown attended the above-noted celebratory dinner hosted by the Liberal Caucus.

[13] Mr. Kormos submits that if the *Members' Integrity Act, 1994* did not apply to a member who breached the *Act* during his tenure as Speaker, the *Act* would have expressly excluded the Speaker. (I will address this issue in more detail below.)

[14] Mr. Kormos agreed that the Speaker in Ontario does campaign in a partisan manner in general elections. He submits, however, that the dinner occurred 18 days after the election and that there was no reasonable connection between the dinner and the partisan activity that the Speaker was permitted during the election campaign.

The Position of Mr. Brown

[15] Mr. Brown takes no issue with Mr. Kormos' main submission – that the Speaker has a duty to protect the impartiality of the Office of Speaker. He states that it was out of respect for this principle that he refrained from participating in all political activities unrelated to his re-election as a member during his tenure as Speaker.

[16] However, Mr. Brown submits that I have no jurisdiction over this complaint as he says that it is for the House to decide questions of misconduct by the Speaker, as Speaker, by way of a substantive motion of non-confidence or via the election process. Further, he states that the *Members' Integrity Act, 1994* is limited to provisions that apply to all members of the Assembly and members and former members of the Executive Council.

[17] If I find that I do have jurisdiction, Mr. Brown makes the alternative submission that there is no "Ontario Parliamentary Convention" respecting the Speaker's alleged display of partisanship outside the House. Further, he submits that if I find that I do have jurisdiction and that there is such an Ontario Parliamentary Convention, the conduct at issue did not contravene this Ontario Parliamentary Convention.

The Office of Speaker

[18] Before I address the issue of jurisdiction, I think it is important to briefly outline some principles and, when possible, the common ground between Messrs. Brown and Kormos relating to the Office of Speaker.

[19] Messrs. Kormos and Brown agree that it is important for a Speaker, the Presiding Officer of the Assembly, to be impartial in the fulfillment of his or her official duties as Speaker. There is ample authority to support the proposition.[3]

[20] Based on the apparent consensus between the parties to this complaint and the authorities I have reviewed, I can safely say – and it will come as a surprise to no one – that the fulfillment of the Speaker's duties in an impartial manner is an important part of Ontario parliamentary tradition.

[21] The Ontario system has its roots in the British parliamentary system; however, there are some significant differences. In the United Kingdom, for example, the Speaker – once elected – breaks all partisan ties and is able to run in his or her riding without

[3] see Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice* at Chapter 7 (The Speaker and Other Presiding Officers of the House) (online at www.parl.gc.ca/MarleauMontpetit); Tim Mercer "Challenging the Chair" (2006) 29(2) *Canadian Parliamentary Review* 21 at 21 (online at www.parl.gc.ca/Infoparl/); Lovick, *supra* at 2.

challenge from other candidates. This is not the case in Ontario and, as acknowledged by Mr. Kormos, Speakers in Ontario are permitted to bare their political stripes at election time and participate – in a partisan way – in the election.

[22] The Speaker holds office on the confidence of the members of the Assembly. If that confidence is questioned, there are remedies available to the Assembly to address the concern. During session the remedy is to bring a substantive motion of non-confidence. Such motions have been moved and debated over the course of Ontario parliamentary history.[4] The most recent motion was in fact filed by Mr. Kormos.

[23] If the impartiality of a Speaker becomes an issue when the House is not sitting, members can voice their concern at the start of each Parliament during the first mandatory order of business – the election of the Speaker.

[24] A common feature of both remedies is that the object is to assess and quantify the confidence of the Assembly in the Speaker. There may be any number of events leading to an alleged loss of confidence or there may be a single incident that members feel is worthy of sanction. It seems to me that it is significant that the members as a collective decide the confidence issue as related to the Speaker.

[25] It is against that general backdrop that I turn now to the jurisdiction issue.

Jurisdiction

[26] Mr. Kormos alleges that Mr. Brown's conduct was a violation of Parliamentary Convention. Whether or not his conduct was a violation of Parliamentary Convention does not determine the jurisdiction issue. I agree with the view of former Integrity Commissioner The Honourable Coulter A. Osborne, that not all conventions were

[4] eg. see Debates, November 3, 1981, pp. 3117-3189; Orders and Notices Paper, November 6, 1981, Order #31; Debates, November 6, 1981, pp. 3275-3277; Debates, November 16, 1981, pp. 3531 – 3546; Journals, November 16, 1981, pp. 187-188; Orders and Notices Paper, September 24, 1996, Order #25; Debates, September 25, 1996, p. 4149; Orders and Notices Paper, March 30, 2005, Order # 41; Debates, March 31, 2005, p. 5851.

intended to be captured by the *Members' Integrity Act, 1994*.[5] Accordingly, if I determine that I do not have jurisdiction, I will not decide whether Mr. Brown's conduct was a violation of Parliamentary Convention.

[27] Mr. Kormos says that because the *Members' Integrity Act, 1994* does not specifically exclude the Speaker from its application it must apply to the Speaker. However, Mr. Brown's position is not that he was immune to the *Members' Integrity Act, 1994* by virtue of the fact that he was Speaker. To the contrary, he acknowledges that he was subject to the *Members' Integrity Act, 1994* as a member but not as Speaker.

[28] To avoid any confusion, I think it is important to state clearly that the member who holds the Office of Speaker is always bound by the *Members' Integrity Act, 1994* as it relates to his duties as a member. In the past, members who hold the Office of Speaker have sought the opinion of this Office under section 28 concerning their duties as a member.

[29] The root of the jurisdiction issue is whether a Speaker, who is also a member, can face repercussions under the *Members' Integrity Act, 1994* for conduct that would, but for his status as Speaker, be otherwise unobjectionable under the *Members' Integrity Act, 1994*. Put another way, does the *Members' Integrity Act, 1994* apply to the conduct of a Speaker as Speaker.

[30] For the reasons that follow it is my view that I do not have jurisdiction to deal with the matter at hand because it relates directly to the issue of the Assembly's confidence in the Speaker, which is an issue that was not intended to be addressed by the *Members' Integrity Act, 1994*. I find support for this conclusion in the provisions of the *Act*.

[31] First, sub-section 30(6) requires that the Assembly and its committees "shall not" conduct an inquiry into a matter that has been referred to this Office. This means that if I

[5] See Report of The Honourable Coulter A. Osborne Re: The Honourable Dalton McGuinty (September 23, 2004) at para 11 and Report of The Honourable Coulter A. Osborne Re: The Honourable Gregory Sorbara (September 23, 2004) at para 10.

were to assume jurisdiction over this matter, the Assembly could not consider the matter. The repercussions of such an outcome in these circumstances are obviously damaging to the capacity of the Assembly to express its confidence, or lack thereof, in the Speaker.

[32] Second, the conduct rules of the *Members' Integrity Act, 1994* expressly apply to all members of the Assembly (including parliamentary assistants), all members of the Executive Council and all former members of the Executive Council. None of the conduct related sections of the *Members' Integrity Act, 1994* refer to the Speaker. This is despite the fact that the *Act* contains the term "Speaker" (i.e. definitions, ss. 24, 30, 31, 32 and 33). All of the references to Speaker relate to my reporting obligations under the *Act.*

[33] This omission is important because it is possible for an individual to hold the Office of Speaker when he or she is not a member, as occurred in 2003 (described above). This reinforces the view that a member holding the Office of Speaker wears two hats – as member and as Speaker.

[34] As outlined above, there are certain responsibilities and expectations of a Speaker that other members do not share. These responsibilities derive from historic custom, the Standing Orders and the *Legislative Assembly Act.* The Speaker in his or her role as Speaker is answerable to the Assembly and serves only as long as he or she maintains the confidence of the Assembly.

[35] In my opinion, if the Legislature intended that the *Members' Integrity Act, 1994* deal with the Speaker's conduct as Speaker, it could have used clear language to express its intention. I find no such language in the *Act.* I therefore conclude that I do not have jurisdiction to make a determination under section 30 of the *Members' Integrity Act, 1994.* I leave the determination of what type of conduct jeopardizes the impartiality of the Office of Speaker where it belongs – with the Assembly.

[36] In light of my finding on jurisdiction, I will not address the substance of the complaint.

DATED at Toronto this 14th day of February, 2008.

Lynn Morrison
Acting Integrity Commissioner

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Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Office of the Integrity Commissioner

Bureau du commissaire à l'intégrité

February 14, 2008

Journals and Procedural Research Branch,
Room 1640, Whitney Block,
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M7A 1A2

Dear Sir or Madam:

Re: Michael A. Brown, Member for Algoma-Manitoulin

I enclose herewith 6 copies of the Report of Lynn Morrison, Acting Integrity Commissioner, with respect to the above matter, as filed with the Speaker of the Legislative Assembly today.

Yours very truly,

Kim Fryer-Ellis

Kim Fryer-Ellis
Assistant to the Integrity Commissioner

Encls.

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